

HONORABLE JOHN C COUGHENOUR

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AT SEATTLE  
 CLERK U S DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 BY \_\_\_\_\_ DEPUTY



CV 03-00659 #00000006

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 AT SEATTLE

GLORIA K OWEN, individually and on  
 behalf of all other similarly situated  
 marine guest services employees,

Plaintiffs,

v

WEST TRAVEL, INC and  
 ALASKA SIGHTSEEING/CRUISE WEST CO  
 d/b/a CRUISE WEST,

Defendants

No C03-0659C

AMENDED COMPLAINT – CLASS OR  
 COLLECTIVE ACTION COMPLAINT

Plaintiff, Gloria K Owen, individually and on behalf of all similarly situated marine guest  
 services employees of defendants, alleges as follows

## SUMMARY OF THE CASE

1 This action arises under the Fair Labor Standards Act ("FLSA") 29 U S C § 201 *et*  
 21 *seq* Defendants own and operate a fleet of cruise ships The crews on defendants' vessels fall into  
 22 two separate categories Defendants use the term "marine operations" to describe the work of the  
 23 category of its marine employees engaged in operating its vessels as a means of transportation These

1 “marine operations” employees include the master, mates, engineers, and deckhands aboard each of  
2 defendants’ vessels. Defendants use the term “marine guest services employees” to define the  
3 separate class of its marine workers, whose primary duties entail cooking, serving, entertaining,  
4 cleaning up after and/or doing housekeeping for the passengers aboard its vessels. These guest  
5 services employees typically work very long hours on defendants’ vessels, well in excess of 40 hours  
6 per week (“overtime”).

7         2 Defendants employed name plaintiff, Gloria K. Owen, as a marine guest services  
8 employee aboard two of its vessels. Ms. Owen alleges that, under the FLSA, marine guest services  
9 employees are entitled to FLSA prescribed overtime compensation for work they perform in excess of  
10 40 hours per week. Ms. Owen further alleges, as more specifically supported herein, that defendants  
11 are well aware of and have acknowledged their obligation to pay their marine guest services  
12 employees FLSA overtime compensation. Nonetheless, defendants have consistently and willfully  
13 failed to pay their marine guest services employees FLSA overtime compensation. Accordingly, Ms.  
14 Owen, on behalf of herself and all other similarly situated marine guest services employees of  
15 defendants, alleges that defendants have violated the FLSA and seeks unpaid overtime wages and  
16 other damages as provided under that statute.

#### 17 JURISDICTION AND VENUE

18         3 Jurisdiction arises under both the jurisdictional provisions of the FLSA 29 U.S.C. §  
19 216(b), and under 28 U.S.C. § 1331.

20         4 Venue is proper in this judicial district under 28 U.S.C. § 1391. A substantial part of  
21 the events and omissions giving rise to the claim occurred in this judicial district. Defendants are  
22 doing business and have their principal place of business within this judicial district.  
23

**PARTIES**

5        Named plaintiff, Gloria K. Owen is a resident of the State of Oregon, and was  
 6 employed as a marine guest services employee, primarily as a baker and galley worker, aboard  
 7 defendants' vessels, the M/V SPIRIT OF COLUMBIA and the M/V GLACIER BAY, between the  
 8 period of on or about April 1999 through October 2001. At all material times Gloria K. Owen was an  
 9 "employee" of defendants within the meaning of 29 U.S.C. § 203.

10        Defendants West Travel, Inc. and Alaska Sightseeing/ Cruise West Co. are doing  
 11 business in the State of Washington and their principal place of doing business is within King County,  
 12 Washington. At all material times defendants were employer(s) and constituted an enterprise  
 13 engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. §  
 14 203.

**DEFINITION OF THE PUTATIVE CLASS**

15        The class of "similarly situated" persons sought to be certified under 29 U.S.C. §  
 16 216(b) is defined as all persons who, at any time, during a period limited to three years prior to filing  
 17 this complaint, worked as a marine guest services employee of defendants aboard defendants'  
 18 American flagged vessels.

19        8. During the period material to this complaint defendants have owned and operated  
 20 seven different American flagged vessels crewed by U.S. citizens and/or U.S. documented workers.  
 21 Defendants also own and operate two other vessels which are foreign flagged, i.e., The SPIRIT OF  
 22 OCEANUS and The M/V PACIFIC EXPLORER (formerly known as The TEMPTRESS  
 23 EXPLORER). On information and belief these foreign flagged vessels are crewed by non-U.S.  
 citizens. To eliminate the disparate issue of whether the FLSA applies to employment aboard  
 defendants' two foreign flagged vessels, the putative class excludes persons employed by defendants

1 *exclusively* on those foreign vessels The class's claims and allegations herein are limited to  
2 employment aboard defendants' American vessels

3 **FACTS COMMON TO ALL CLAIMS**

4 9 Defendants did not enter a written contract with Gloria K Owen, but instead employed  
5 Ms Owen and, on information and belief, its other marine guest services employees, under oral  
6 contracts

7 10 Gloria K Owen and defendants other marine guest services employees usually worked  
8 in excess of 40 hours per week ("overtime") More specifically, plaintiff and defendants' other  
9 marine guest services employees typically worked 12 or more hours per day, 7 days a week

10 11 Gloria K Owen and defendants' other marine guest services employees primarily  
11 worked in providing services to the passengers aboard defendants' vessels

12 No marine guest services employee's services were "rendered primarily as an aid in the operation of  
13 defendant's vessels as a means of transportation" within the meaning of 29 C F R § 783.31

14 Accordingly, Gloria K Owen, and defendants' other marine guest services employees are not exempt  
15 as "seaman" under 29 U S C § 213(b)(6) from the FLSA's overtime payment requirements under 29  
16 U S C § 207(a)(1)

17 12 Defendants' year 2000 employee handbook states that "[m]ost members of the deck  
18 staff working aboard vessels are seamen under federal guidelines, and as such are exempt from  
19 overtime earnings " However, defendants' year 2000 employee handbook goes on to further state that  
20 "[e]xcept for Hotel Managers and Chefs, guest services employees working aboard vessels are not  
21 exempt from overtime earnings " Accordingly, with the exception of Hotel Managers and Chefs,  
22 defendants have acknowledged that most of their marine guest services employees are entitled to  
23 overtime compensation under the FLSA

1           13     On information and belief defendants' other employee handbooks and/or documents  
2 issued during the period material to plaintiffs' claims, further reflect defendants' knowledge that its  
3 navigational marine employees are exempt from overtime earnings, but that its marine guest services  
4 employees are entitled to overtime under federal law

5           14     The basic compensation terms of named plaintiff's and defendants' oral employment  
6 agreement were that plaintiff was to be paid a day rate of \$60 dollars per 10 hour day, plus a share of  
7 the tips paid by passengers amongst a pre-designated pool of tipped employees For all hours worked  
8 over 10 per day, named plaintiff was to be paid at an hourly rate equal to one and one-half times  
9 minimum wage In addition to the fore-stated compensation, plaintiff received room and board aboard  
10 the vessel

11           15     On information and belief, defendants paid its other marine guest services employees  
12 under the same basic salary structure which it used to pay the named plaintiff More specifically,  
13 defendants compensated its marine guest services employees through the combination of a day rate,  
14 plus tips, plus an hourly rate for hours over ten per day

15           16     For work performed in excess of 40 hours per week, defendants did not pay Gloria K  
16 Owen, nor, on information and belief, its other marine guest services employees, compensation at a  
17 rate not less than one and one-half times the "regular rate" at which they were employed within the  
18 meaning of 29 U S C § 207(a)(1).

19           17     Defendants required Gloria K Owen and, on information and belief, its other marine  
20 guest services employees to record and report the time they worked each day on a daily time sheet

21           18     At all material times defendants used a bi-weekly pay period  
22  
23

**COLLECTIVE OR CLASS ACTION ALLEGATIONS**

19 Plaintiff seeks to maintain this action as a collective action pursuant to 29 U S C § 216(b) The Court may certify this action as a collective action pursuant to 29 U S C § 216(b) and allow joinder of similarly situated employees and former employees of defendants The similarly situated employees whom named plaintiff seeks to join are the class of employees defined above under paragraph 7 of this complaint

20 Information as to the precise size of the putative class of similarly situated employees is solely in possession of defendants However, on information and belief, the potential class consists of more than 100 persons It would be more judicially efficient to adjudicate this matter as a collective action as opposed to adjudicating numerous individual actions involving common issues of law and material fact Plaintiff's attorneys do not anticipate any difficulties in the management of this suit as a collective action

21 Further, a collective action is superior to other methods for the fair and efficient adjudication of the controversy as it serves the broad remedial purposes of the FLSA by providing the most thorough and comprehensive means of addressing, and redressing if appropriate, defendants' alleged knowing and willful violation of that statute

22 A collective action also serves the broad remedial purposes of the FLSA by lowering the costs to plaintiffs, thus better enabling them to pursue claims for violation of the statute Costs to individual plaintiffs in a collective action are lowered through the pooling of resources and by limiting the controversy to one proceeding which efficiently resolves common issues of law and fact that arose from the same alleged activity

23 There are issues of law and fact common to all members of the putative class that predominate over any issue affecting only individual class members The facts common to all

1 members of the putative class include those set out in the preceding section of this complaint. The  
2 issues of law common to all members of the class include (a) whether marine guest services  
3 employees are exempt as "seaman" under 29 U.S.C. § 213(b)(6) from the FLSA's overtime payment  
4 requirements under 29 U.S.C. § 207(a), (b) whether defendants violated 29 U.S.C. § 207(a)(1) by  
5 failing to pay members of the class FLSA prescribed overtime compensation, and, (c) whether  
6 defendants' marine guest services employees were subject to a single unlawful practice or plan  
7 whereby defendants knowingly and willfully deprived them of overtime compensation mandated by  
8 the FLSA.

9       24     Named plaintiff, Gloria K. Owen's, claims are typical of the claims of the putative  
10 class. The named plaintiff, like the other members of the putative class, alleges that she worked long  
11 hours as a marine guest services employee and defendants knowingly and willfully failed to pay her  
12 overtime compensation in violation of the FLSA. Further, the named plaintiff does not have any  
13 conflicts of interest with the other members of the putative class.

14       25     Defendants have acted or refused to act on grounds generally applicable to the class,  
15 thereby making appropriate final declaratory relief with respect to the class as a whole.

16       26     The named plaintiff will fairly and adequately protect the interests of members of the  
17 class and has retained competent counsel.

18                   **FIRST CAUSE OF ACTION - VIOLATION OF 29 U.S.C. § 207(a)(1)**

19       27     Plaintiff re-alleges and incorporates by reference all of the foregoing allegations.

20       28     For the purposes of her Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et seq.,  
21 claim, plaintiff, and the putative class, are not exempt employees under any of the exemptions stated  
22  
23

1 under the statute Specifically, the "seaman" exemption under Section 13(b) of the FLSA, 29 U S C §  
2 213(b)(6), does not apply to the named plaintiff and the rest of the members of the putative class

3 29 Defendants did not pay the named plaintiff, and the rest of members of the putative  
4 class, compensation for work performed in excess of 40 hours per week at a rate not less than one and  
5 one-half times the regular rate at which they were employed Defendants' failure to so compensate  
6 plaintiff and the putative class violated 29 U S C § 207(a)(1)

7  
8 30 Defendants' failure to pay overtime, to plaintiff and the rest of the members of the  
9 putative class, in violation of 29 U S C § 207(a) was willful and not in good faith

10 **SECOND CAUSE OF ACTION – DECLARATORY RELIEF**

11 31 Plaintiff re-alleges and incorporates by reference as though set forth completely herein,  
12 all of the foregoing allegations

13 32 Plaintiff, and the rest of the members of the putative class, are entitled to a declaration  
14 of their rights and, in accordance with 28 U S C § 2201, seek a Declaratory Judgment that they are  
15 nonexempt employees under the FLSA and are, therefore, entitled to overtime compensation, pursuant  
16 to 29 U S C § 207(a)(1), and that, they were not paid overtime compensation in compliance with the  
17 FLSA Further and in accordance with 28 U S C § 2202, plaintiff, and the rest of the members of the  
18 putative class, seek an Order requiring that defendants compensate them for overtime compensation  
19 pursuant to 29 U S C § 207(a)(1)

20 33 Plaintiff, and the rest of the members of the putative class, seek all further relief, in  
21 accordance with 28 U S C § 2201, *et seq* , as may be necessary, proper and just  
22  
23



PRAYER

Plaintiff Gloria K Owen, individually and on behalf of all others similarly situated, prays for relief as follows

(a) For an Order determining and certifying the instant action as a proper class action maintainable under 29 U S C § 216(b),

(b) For judgment against defendants for unpaid overtime wages in an amount to be proven at trial, and for an additional equal amount as liquidated damages, attorneys fees and costs pursuant to 29 U S C § 216(b),

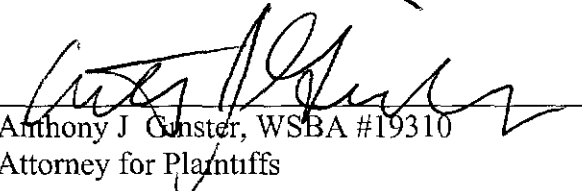
(c) For an Order declaring defendants' marine guest services employees to be non-exempt employees under the FLSA and therefore entitled to overtime compensation pursuant to the provisions of the FLSA,

(d) For pre-judgment and post-judgment interest,


(e) For the costs of maintaining this suit, and,

(f) For an award to plaintiffs of any other relief this Court deems equitable and just

DATED this 19 day of May, 2003

  
Anthony J Ginster, WSBA #19310  
Attorney for Plaintiffs

DATED this 19 day of May, 2003

  
Gordon C Webb, WSBA #22777  
Attorney for Plaintiffs